

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CE, CUSTOMS GOLD CONTROLL REF. No 3 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

J

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

SHRI RAM KIRPAL

Versus

COMMISSIONER OF CUSTOMS

Appearance:

MR H. KAPOOR for MR JJ YAJNIK for Petitioner

MR JAYANT PATEL for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

Date of decision: 05/10/98

ORAL JUDGEMENT (per R.K. Abichandani, J.)

The Customs, Excise and Gold (Control) Appellate
Tribunal, New Delhi, has referred the following question
of law for the opinion of this court under Sec. 130(1)

of the Customs Act, 1962.

"Whether poppy seed is "diabetic food" within the meaning of the expression in item 55 of the list of freely importable consumer goods in 1992-97 Import-Export Policy?"

2. The matter relates to the import of 151.060 MTs of poppy seeds (khas-khas) of Pakistan origin at CFS Adalaj for which 7 bills of entry Nos. 267/95 dt. 10.10.95, 268/95 dt. 10.10.95, 290/95 dt. 8.11.95, 291/95 dt. 8.11.95, 11/96, 12/96 and 13/96 all dt. 12.1.96 were filed on behalf of M/s. Sunder Brej Ayurvedic Farmacy, Meerut, a sole proprietary concern of Shri Ram Kirpal. Clearance was sought in respect of said quantity of poppy seeds as freely importable goods claiming that poppy seeds were "diabetic food" in terms of Sr.No. 55 of the List of Consumer Goods allowed to be imported freely under the Import-Export policy for the years 1992-97. The Commissioner, Customs (Preventive), Ahmedabad, by his order dated 21.3.1996, confiscated the consignment of poppy seeds of 151.060 tons under clause (d) and (m) of Sec. 111 of the Customs Act, 1962 on account of violation of Sec. 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 read with clause 3 of the Import (Control) Order, 1995 and Sec. 11 of the Customs Act, 1962, and also as the importers had misdeclared the value of the goods vis-a-vis Sec. 14 of the Act read with the Customs Valuation Rules 1988, but allowing option to the importers to redeem the goods on payment of fine of Rs. 50 lakhs in lieu of confiscation and on payment of customs duty at the appropriate rate fixed under the Order as against the declared rate. He also imposed penalty of Rs. 10 lakhs on Shri Sanjay Kapoor, partner of M/s. Sree Viswanath & Sons, Delhi, and of Rs. 1000 on Shri Ram Kirpal, proprietor of Sunder Brej Ayurvedic 'Farmacy' under Sec. 112(a) of the Act.

Both Shri Ram Kirpal and Shri Sanjay Kapoor challenged the order of the Commissioner before the appellate tribunal contending that poppy seeds being diabetic food was freely importable under OGL and that the value declared was correct. The tribunal found that poppy seeds were consumer goods and in absence of anything more their import could be made only under a specific licence in view of para 156 serial No. 1 of List A of the 1992-97 Policy. The tribunal took into consideration various documents on which reliance was placed by the appellants in support of their contention that poppy seeds should be treated as diabetic food and

came to a finding that the articles on which reliance was placed cannot lead to a reasonable conclusion that poppy seeds were diabetic food though they suggested that poppy seeds could be an ingredient of medicine for treatment of diabetics in the Unani system of medicine. The tribunal agreed with the view taken by the Commissioner that the appellants had failed to prove that poppy seeds were 'diabetic food' even according to Unani system of medicine. The tribunal also noted that there was no case put forward before it that poppy seeds were diabetic food according to any other system of medicine. The tribunal therefore found that poppy seeds could not have been imported without a specific licence and since the importer did not have any such licence, there was violation of the import policy. The tribunal found that the import was the result of manipulation by Shri Sanjay Kapoor with the connivance of Shri Ram Kirpal. The tribunal in the result upheld the confiscation of the goods under Sec. 111(d) of the Act but set aside the quantification of redemption fine and penalty imposed on Shri Sanjay Kapoor with a direction on the jurisdictional adjudicating authority to quantify the redemption fine and penalty imposable on Shri Sanjay Kapoor and also determine assessable value on the basis of value declared and determine the duty payable and pass a fresh adjudication order after granting the appellants an opportunity of personal hearing and producing the documents to show the ruling price of poppy seeds.

3. After the aforesaid question was referred by the tribunal to this court, it was noticed that the tribunal had not forwarded the relevant orders and other record and, therefore, on 13.4.1998, the tribunal was directed by this court to forward a supplementary statement of case which should contain all the relevant orders and other papers and accordingly the tribunal did forward the supplementary statement of case along with the order of the Commissioner of Customs and its own order and xerox copies of the correspondence and other documents which were referred to before it during the appellate proceedings as narrated in the supplementary statement of case.

4 (a) Before the tribunal the appellants had relied upon an unsigned letter of SAF (abbreviation for the sole proprietary concern of Shri Ram Kirpal) to the Director, Ayurvedic and Unani Seva Sanstha, Lucknow, soliciting information about the use of poppy seeds in the treatment of diabetics and in reply it was stated by the Addl. Director that poppy seeds can be used as food by diabetic patients. The tribunal found this opinion to be

worthless since every item of food which could be used by such patients cannot be regarded as diabetic food. The tribunal found that the opinion expressed in the reply did not show that poppy seeds could contribute to prevention, control or cure of the disease.

(b) There was another unsigned letter dated 23.5.96 of SAF to the Director, Central Council for Research in Unani Medicine, New Delhi, seeking his opinion about the use of poppy seeds in the treatment of diabetics in the Unani system of medicine as one of the ingredients of nutritious food. A reply dated 28.6.95 was sent by the Senior Research Officer (Unani) of the Council stating that poppy seeds were frequently mentioned for treatment of diabetics in various Unani formulations as one of the ingredients and since poppy seeds were considered as nutritious food in Unani medicinal literature, they could be used by diabetic patients. The tribunal, from this opinion, noted that poppy seeds were an ingredient in the treatment of diabetics and that they were nutritious food which could be taken by diabetic patients. The tribunal found that from these two aspects it cannot be said that poppy seeds fall under the category of "diabetic foods". It was observed that ingredients of medicine cannot be regarded as food and permissibility of an article as food for diabetic patients was not sufficient to show that it constitutes "diabetic food".

(c) The tribunal also took into account reply dated 9.10.1992 of the Deputy Chief Controller of Imports and Exports, New Delhi, to M/s. Universal Fruit Co., Delhi, communicating its view that poppy seeds required for making ayurvedic and Unani medicines were freely importable and clearance may be allowed after taking a declaration that the poppy seeds imported would be used for such purposes. In respect of this letter, the tribunal observed that it did not indicate that poppy seeds were to be regarded as diabetic food but only indicated that they were an ingredient of ayurvedic and Unani medicine. The tribunal held that the said letter had no relevance in considering item No. 55 in the list of exceptions, namely, "diabetic foods".

(d) As regards reply dated 4.4.1996 of Senior Research Officer (Unani) addressed to SAF stating that the earlier letter dated 28.6.95 was self-explanatory and that poppy seeds were an article of food having many medicinal values and they were included as one of the ingredients of the formulations prescribed for diabetics in Unani system of medicine, the tribunal observed that this opinion related to the medicinal quality of poppy

seeds but it was not sufficient to indicate that poppy seeds were diabetic food. That letter included copies of extracts of two books, one by Hakim Ajmal Khan and the other by Hakim Mohammed Akmal Khan, according to whom certain juices prepared out of poppy seeds and other substances could be used in the treatment of diabetics. The tribunal observed that this was not sufficient to show that poppy seeds were "diabetic food".

(e) Reliance was placed before the tribunal on a certificate dated 9.4.96 issued by one Dr. Rajesh Kumar Sharma possessing M.Sc. and Ph.D (Botany) qualifications opining that poppy seeds were nutritious and rich in proteins (21.5 to 23.5%), oil (about 46 to 49%), carbohydrates, vitamins, minerals and amino acids etc. and that they have linoleic acid which has the property of lowering blood cholesterol and reducing atherosclerosis, arterial thrombosis, systolic and diastolic blood pressure and control the progression of diabetic retinopathy as well as detoxifying carcinogens. Dr. Sharma had opined that poppy seeds, in addition to their nutritional qualities, may be used for medicinal preparations for coronary heart diseases, hypertension, diabetic retinopathy and for its hypo-glycemic effects. The tribunal noted that this opinion was based on five articles published in research journals and that these articles show that poppy seeds contained crude protein, crude fibre, carbohydrates and minerals like potassium, phosphorus, sodium, iron, calcium and magnesium and that poppy seed oil contained linoleic acid, saturated and unsaturated fatty acids. The authors had cautioned that more research was needed to pinpoint and ascertain the actual modes of action of the plant materials and more research was required in the isolation and characterization of active ingredients for 'in-vitro' studies. The tribunal came to the finding that these articles cannot lead to any reasonable conclusion that poppy seeds can be used as diabetic food from the preventive and curative point of view.

(f) The tribunal also referred to the opinion of the Drug Controller General, New Delhi, as to the use of poppy seeds, sent by the Deputy Adviser (Unani) of the Drug Control Cell of the Department of the I.S.M. stating that poppy seeds had therapeutic value and can be used as nutritious supplement food for diabetic patient. The tribunal found that this opinion that poppy seeds can be used as nutritious supplement food for diabetic patients was based on certain undisclosed references and that the expert opinion did not disclose such data and reasons.

5. The tribunal, after scrutiny of the documents relied upon by the appellants, found that there was no sufficient material to show that poppy seeds were diabetic food though the documents suggested that poppy seeds were an ingredient of medicine for treatment of diabetics in the Unani system of medicine. The tribunal also took note of the material referred to by the Commissioner on diabetics projecting an allopathic point of view and noted that the books referred to by the Commissioner did not refer to poppy seeds as diabetic food though, according to the appellants's case, it was in Unani system of medicine that poppy seeds were treated as diabetic food. The tribunal also noted that at entry A.05 of Appendix B of Prevention of Food Adulteration Rules, 1955, poppy seeds were placed under the heading "Spices and Condiments" and, therefore, they were food or foodstuff but held that in the present case it was not concerned with the word "food" or "foodstuff" but with the words "diabetic foods". It was observed that the word "food" in the expression "diabetic food" must take its colour from the context as food recommended or prescribed for diabetic patients, but such evidence was lacking.

6. The learned counsel appearing for the sole proprietary concern of M/s. Sunder Brej Ayurvedic 'Farmacy' (SAF) referred to all the aforesaid documents and made the same submissions which were made before the tribunal. He contended that poppy seeds could be eaten as raw food by diabetics and they fell within the expression "diabetic foods" at item 55 of the list of the consumer goods which were freely importable. He submitted that even if poppy seeds fall in category D pertaining to seeds, plants and animals of paragraph 156 of the Negative List of imports, the benefit of exemption should still be in favour of the citizen because poppy seeds also fall in the category of 'diabetic foods' which are freely importable. The learned counsel placed reliance on the decision of the Supreme Court in A.V. Fernandez v. State of Kerala reported in AIR 1957 SC 657 in which, on the question of interpretation of fiscal enactments, the Supreme Court held that in construing the fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. It was held that if the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the

substance of the matter. Reliance was also placed by him on the decision of the Supreme Court in M/s. Oswal Agro Mills Ltd. v. Collector of Central Excise reported in AIR 1993 SC 2288 in which it was held that where the words of a statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The court would interpret them as they stand. The learned counsel also relied upon the decision of the Supreme Court in CIT v. Karamchand Premchand Ltd. reported in AIR 1960 SC 1175 in which in context of the provisions of the Business Profits Tax Act, 1947, it was held that if there is any ambiguity of language in a provision, the benefit of that ambiguity must be given to the assessee. He also relied upon the decision of the Calcutta High Court in Indian Explosives Ltd. v. Collector of Customs reported in 1992(60) ELT 111 (Calcutta) in which it was held that where, if there are two interpretations possible, then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.

7. The learned counsel appearing for the department submitted that diabetic foods which could be freely imported are food preparations and not seeds. He submitted that the seeds fell in category D of paragraph 156 and therefore unless specifically exempted by reference to particular seeds, they cannot be read in the items which are enumerated in category A under the head 'Freely Importable Goods'. It was submitted that food preparation should be such as is primarily meant for diabetic patients. He submitted that poppy seeds, in fact, are more common for use in food preparations for non-diabetics, as for example, on laddus, sweetmeats and cakes. He also submitted that the nature of an exemption is required to be construed strictly.

8. As stated in the "Introduction to the Export and Import Policy", for the period from 1.4.1992 upto 31.3.1997, the central Government had notified on 31.3.92 the said export and import policy for 1992-97 in exercise of the powers conferred under sec. 3 of the Imports and Exports (Control) Act, 1947. That Act was thereafter repealed and replaced initially by the Foreign Trade (Development and Regulation) Ordinance 1992 promulgated on 15.2.1992 and thereafter by the Foreign Trade (Development and Regulation) Act, 1992 and the said policy is deemed to have been notified under sec. 5 of the said Foreign Trade Act, 1992 which was assented to on 7.8.1992. Sections 11 to 14 of the said Act of 1992 came into force at once while the remaining provisions were

deemed to have come into force on 19.6.1992. By Sec. 20 of the Act of 1992, the Imports and Exports (Control) Act, 1947 and the Foreign Trade (Development and Regulation) Ordinance, 1992, were repealed. The repeal, however, did not affect the previous operation of the Act or anything duly done thereunder as provided by sub-sec. 2(a) of Sec. 20. That is how the said policy which was declared under Sec. 3 of the Imports and Exports (Control) Act, 1947, continued to operate even after the repeal of the Act and was deemed to have been notified under sec. 5 of the Act of 1992 which requires the policy formulated by the Central Government to be announced by a notification published in the official gazette. Under Sec. 3 of the Imports and Exports (Control) Act, 1947, the Central Government was, inter alia, empowered to make provision for prohibiting, restricting or otherwise controlling the import of goods of any specified description. It was provided in sub-sec. (2) of sec. 3 of that Act that all goods to which any Order under sub-sec. (1) applied shall be deemed to be goods of which the import or export has been prohibited under sec. 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. In the corresponding provision of sec. 3 of the Act of 1992 also there is reference to the power of the Central Government to make provisions relating to imports and exports, and, sub-sec. (1) provides that the Central Government may, by order, published in the official gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports. In sub-sec. (2) of sec. 3 it is provided that the Central Government may also, by Order published in the official gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods. In sub-sec. (3) of sec. 3 it is provided that all goods to which any Order under sub-sec. (2) applies shall be deemed to be goods the import or export of which has been prohibited under sec. 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly. Thus, if the goods are imported in violation of the prohibition, regulation or restriction imposed under an Order of the Central Government, then the consequences which are attracted in respect of the import of the goods prohibited under sec. 11 of the Customs Act, 1962 as provided in that Act would be attracted. As provided by sec. 111(d) of the Customs Act, any goods which are imported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in

force are liable to be confiscated.

The Imports (Control) Order, 1955, was issued in exercise of the powers conferred by secs. 3 and 4A of the Imports and Exports (Control) Act, 1947 by the Central Government and it was provided in clause 3(1) of the Order that, save as otherwise provided in the Order, no person shall import any goods of the description specified in Schedule I, except under and in accordance with a licence or a customs clearance permit granted by the Central Government or by any officers specified in Schedule II thereof. Sub-clause (3) of Clause 3 of the Order provides that, if, in any case, it was found that the goods imported under a licence did not conform in every respect to the description or value of the goods as contained in the licence or to the other conditions relating to such goods, as contained in, or applicable to the licence, the import of such goods shall be deemed to be prohibited. It will be noted from Schedule I to the Imports (Control) Order, 1955, that headings corresponding to the respective headings in the first schedule to the Customs Tariff Act, 1975 were mentioned section-wise. Chapter 12 of Schedule I entitled 'Oilseeds and oleaginous fruits; miscellaneous grains; seeds and fruits; industrial and medicinal plants; straw and fodder', at item 12.07 enumerated 'plants and parts (including seeds and fruit) of trees, bushes, shrubs or other plants, being goods of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes, fresh or dried, whole, cut, crushed, ground or powdered'. Item 12.01 related to 'Oil seeds and oleaginous fruits, whole or broken'. The Customs Tariff Act, 1975 which laid down rates at which duties of customs shall be levied under the Customs Act, 1962 as specified in the 1st and the 2nd schedules thereto reflects similar scheme of classification in Schedule I thereof under various heads. In Section II of Schedule I under the heading Edible Vegetable Products in Chapter 12 entitled 'Oil seeds and oleaginous fruits, miscellaneous grains, seeds and fruit, industrial or medicinal plants, straw and fodder' 'poppy seeds' appear at sub-item 1207.91 under the sub-head "other oil seeds and oleaginous fruits whether or not broken" which is item 12.07. Section IV of the said Schedule I relates to 'Prepared Foodstuffs, Beverages, Spirits and Vinegar, Tobacco and Manufactured Tobacco Substitutes' and in Chapter 21 therein relating to 'Miscellaneous Edible Preparations' at Item 21.06 there is sub-heading "Food preparations not elsewhere specified or included", which contains a residuary item viz. "Other" at 2106.90. The export and import policy for the years in question, i.e.,

for 1992-97 adopts a system of classification followed by Customs, Central Excise and DGCI & S which was based on Harmonised System (HS) of commodity classification. The coding system, headings and sub-headings follow the aforesaid pattern of First Schedule to the Customs Tariff Act, 1975 as stated in the Preface dated 16.10.95 to the Export and Import Policy by the Director General of Foreign Trade.

9. In Chapter III of the Policy, clause 7 defines various words and expressions and at clause 2 the word 'Act' is defined so as to mean Foreign Trade (Development and Regulation) Act, 1992. The words "consumer goods" defined at clause 12 mean any consumption goods which can directly satisfy human needs without further processing and include consumer durables and accessories thereof. The word "licence" as defined by clause 21 means a licence granted under the Act. If any question or doubt arises in respect of interpretation of any provisions contained in the policy, the Director General of Foreign Trade is named as an authority in para 20 for interpretation of the policy.

10. Chapter XV of the Policy enumerates Negative List of Imports and under paragraph 156 which lays down restricted items, consumer goods fall in category 'A' in which Item No. 1 relates to all consumer goods, howsoever described, of industrial, agricultural, mineral or animal origin and it is stated that their import is not permitted except against a licence or in accordance with a public notice issued in this behalf. In respect of this category of goods, that is, consumer goods, there is a list enumerating the consumer goods which were freely importable notwithstanding the restriction of an import licence imposed in respect of all consumer goods. Item 11 thereof exempts from the restrictions, crude drugs required for the manufacture of ayurvedic and Unani medicines as listed in Appendix XLVIII of the Handbook of Procedures, 1992-97. On verification from that list, we are told by both the sides that poppy seeds do not figure therein as a crude drug. At item 55 of the said list of consumer goods which were freely importable, there is reference to "diabetic foods" the benefit of which has been claimed by the importers. Category B of paragraph 156 relates to precious, semi-precious and other stones and category C to safety, security and related items. Category D relates to 'Seeds, Plants and Animals' and at serial No. 4 thereof appears the item of "Plants, fruits and seeds". The nature of restriction shown in respect of import of seeds for consumption is indicated in clause

(c) which reads as under:

"(c) Import of seeds, fruits and plants for consumption or other purposes is permitted against a licence or in accordance with a Public Notice in this behalf."

The word "seeds" is not restricted to any particular variety of seeds and would include all seeds unless specifically excluded elsewhere for a different and separate treatment.

11. According to the importers, the expression "diabetic foods" will include all the variety of foods which can be taken by diabetic patients. An example of bitter gourd powder was given by the learned counsel who appeared for them. Relying upon the literature of Unani system of medicine, it was contended that poppy seeds have high nutrition value and can be consumed by diabetic patients. Admittedly, poppy seeds in the quantity of 151.060 tons which was imported by the said party was not to be used for any medicinal purposes, and as stated by the learned counsel, they were to be sold as grocery item. It was contended that even if poppy seeds were to be sold to the grocers, diabetics would have consumed them as diabetic food. It was contended that it was a property of poppy seeds which made them particularly suitable for diabetic patients. We are unable to subscribe to the view propounded by the learned counsel that poppy seeds should be treated as diabetic food. This submission totally ignores the scheme of classification of goods. In the Export and Import Policy aligned on ITC (HS) classification published by the Ministry of Commerce, Govt. of India, for the period from 1st April 1992 - 31 March 1997, the item of 'diabetic foods' appears at item 210690 09.10 in Chapter 21 which is titled "Miscellaneous Edible Preparations" under sub-heading "Food preparations not elsewhere specified or included" at Item 21.06. Thus, it is the diabetic foods which can be said to be food preparations and which are not elsewhere specified or included which could be freely imported as stated against that item as per the policy which exempts them at serial No. 55 of the list of consumer goods which were freely importable. The word 'preparation' has reference to a specially prepared substance and in the context of this item of 'diabetic foods' it would mean a specially prepared food for diabetic patients. As noted above, consumer goods as defined in clause 12 of Chapter 7 of the policy would mean any consumption goods which can directly satisfy

human needs without further processing. 'Poppy seeds' in their raw form without any further processing and without their being used in any food preparations cannot be said to be food preparations which can be used as consumer goods under the sub-item "diabetic foods". It is only such foods as can be called food preparations which are prepared for diabetic patients that can fall in the expression "diabetic foods" and not poppy seeds which are raw seeds and which squarely fall under the heading "other oil seeds and oleaginous fruits, whether or not broken" occurring in Chapter 12 at item 12.07 which clearly specifies at item 120791 00 'poppy seeds' against which it is stated that they are a restricted item and import thereof is not permitted except against a licence.

From the scheme of classification it is thus clear that poppy seeds fall under Chapter 12 of the classification viz. "Oil seeds and oleaginous fruits; miscellaneous grains; seeds and fruit; industrial or medicinal plants; straw and fodder". The Export and Import Policy is to be read in tune with the ITC (HS) classification which was adopted for the purpose and published by the Central Government in respect of the said 1992-97 Policy. As noted above, category D of paragraph 156 clearly enumerates the item of 'Plants, Fruits and Seeds' at serial No. 4 and in clause (c) relating to the nature of restriction when these items are imported for consumption or other purposes it is provided that their import would be permitted against a licence or in accordance with a Public Notice in this behalf. Poppy seeds, therefore, would squarely fall under category D at item 4 of 'Plants, fruits and seeds' for which the restriction of the nature mentioned therein would be attracted when the import is made for consumption or other purposes. Poppy seeds which were imported were clearly intended for consumption and therefore they required a licence for import under the restriction imposed under category D of paragraph 156 of the import policy.

Merely because poppy seeds can be used in other food preparations would not, by itself, make raw poppy seeds a food preparation. The poppy seeds have no drug properties and they are used as bird food and the pressed seed cake can be fed to livestock. Oil can be extracted from poppy seeds which has medicinal value. Raw poppy seeds can be used for preparing sweetmeats, laddus and for flavouring cakes, breads and rolls which essentially are non-diabetic foods. Even if they have some medicinal qualities, according to the Unani system of medicine, that would not, by itself, make poppy seeds a diabetic

food preparation. As held by the Supreme Court in Novopan India Ltd. v. Collector of Central Excise & Customs, Hyderabad in 1994(73) ELT 769 the principle that in the case of ambiguity a taxing statute should be construed in favour of the assessee does not apply to the construction of an exception or an exempting provision and they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision and in case of doubt or ambiguity, the benefit must go to the State. The Supreme Court, referring to the earlier Constitution Bench decision in Hansraj Gordhandas v. H.H. Dave reported in 1969(2) SCR 253 held that such notification has to be interpreted in the light of the words employed by it and not on any other basis. The Supreme Court observed that this was held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption. Applying these principles, we are clearly of the view that poppy seeds do not fall in the category of "diabetic foods" within the meaning of the expression in item 55 of the list of freely importable consumer goods in 1992-97 Import-Export Policy and the question referred to us is answered accordingly.

The Reference stands disposed of with no order as to costs.

(hn)